

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JACOB SILVERMAN,

Plaintiff,

v.

HUMBOLDT COUNTY CORRECTIONAL  
FACILITY, et al.,

Defendants.

Case No. [17-cv-01140-KAW](#) (PR)

**ORDER DIRECTING SERVICE ON  
UNSERVED DEFENDANT**

This is a *pro se* civil rights action filed by pre-trial detainee Jacob Silverman. On December 1, 2017, this Court reviewed Plaintiff's Amended Complaint and found the allegations, liberally construed, appeared to give rise to cognizable claims under the Free Exercise Clause and the Religious Land Use and Institutionalized Persons Act ("RLUIPA") against all the named defendants and ordered service on all Defendants except the owner/manager of the Humboldt County Jail kitchen. The Court could not order service on the last defendant because Plaintiff had not provided the owner/manager's name and address. The Court directed Plaintiff to provide this information within 28 days from the date of the order. On December 11, 2017, Plaintiff submitted a letter indicating that Armando Reyes is the manager of the Humboldt County Jail kitchen and his employment address is the Humboldt County Jail, 825 5th Street, Eureka, California 95501.

Accordingly, the Court orders as follows:

1. The Clerk of the Court shall mail a Notice of Lawsuit and Request for Waiver of Service of Summons, two copies of the Waiver of Service of Summons, a copy of the original petition (docket no. 1), amended complaint (docket no. 9), and all attachments thereto, a copy of the Court's Order of Service (docket no. 13), a copy of this Order and a copy of the form "Consent or Declination to Magistrate Judge Jurisdiction" to Armando Reyes, Manager of the Humboldt

1 County Jail kitchen at the Humboldt County Jail, 825 5th Street, Eureka, California 95501. This  
2 form can also be found at [www.cand.uscourts.gov/civilforms](http://www.cand.uscourts.gov/civilforms). The Clerk shall also mail a copy of  
3 this Order to the Office of the Humboldt County Counsel, and a copy of this Order to Plaintiff.

4 2. Defendant is cautioned that Rule 4 of the Federal Rules of Civil Procedure requires him  
5 to cooperate in saving unnecessary costs of service of the summons and complaint. Pursuant to  
6 Rule 4, if Defendant, after being notified of this action and asked by the Court, on behalf of  
7 Plaintiff, to waive service of the summons, fails to do so, he will be required to bear the cost of  
8 such service unless good cause be shown for his failure to sign and return the waiver forms. If  
9 service is waived, this action will proceed as if Defendant had been served on the date that the  
10 waiver is filed, except that pursuant to Rule 12(a)(1)(B), Defendant will not be required to serve  
11 and file an answer before sixty days from the date on which the request for waiver was sent. (This  
12 allows a longer time to respond than would be required if formal service of summons is  
13 necessary.)

14 Defendant is advised to read the statement set forth at the foot of the waiver form that more  
15 completely describes the duties of the parties with regard to waiver of service of the summons. If  
16 service is waived after the date provided in the Notice but before Defendant has been personally  
17 served, the answer shall be due sixty days from the date on which the request for waiver was sent  
18 or twenty days from the date the waiver form is filed, whichever is later.

19 3. Defendant shall file his Consent or Declination to Magistrate Judge Jurisdiction on or  
20 before the date the answer is due.

21 4. The following briefing schedule shall govern dispositive motions in this action:

22 a. No later than thirty days from the date the answer is due, Defendant shall file a  
23 motion for summary judgment or other dispositive motion. If Defendant files a motion for  
24 summary judgment, it shall be supported by adequate factual documentation and shall conform in  
25 all respects to Federal Rule of Civil Procedure 56. If Defendant is of the opinion that this case  
26 cannot be resolved by summary judgment, he shall so inform the Court prior to the date the  
27 summary judgment motion is due. All papers filed with the Court shall be promptly served on  
28 Plaintiff. Defendant shall coordinate with the other served Defendants in this case so that their

1 motions can be filed in one brief.

2 At the time of filing the motion for summary judgment or other dispositive motion,  
3 Defendant shall comply with the Ninth Circuit's decision in *Woods v. Carey*, 684 F.3d 934 (9th  
4 Cir. 2012), and provide Plaintiff with notice of what is required of him to oppose a summary  
5 judgment motion. If the motion is based on non-exhaustion of administrative remedies, Defendant  
6 must comply with the notice and procedural requirements in *Albino v. Baca*, 747 F.3d 1162 (9th  
7 Cir. 2014). See *Stratton v. Buck*, 697 F.3d 1004, 1008 (9th Cir. 2012).

8 b. Plaintiff's opposition to the motion for summary judgment or other dispositive  
9 motion shall be filed with the Court and served on Defendant no later than twenty-eight days after  
10 the date on which Defendant's motion is filed. The Ninth Circuit has held that the following notice  
11 should be given to *pro se* plaintiffs facing a summary judgment motion:

12 The defendants have made a motion for summary judgment by which they seek to have  
13 your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules  
14 of Civil Procedure will, if granted, end your case.

15 Rule 56 tells you what you must do in order to oppose a motion for summary judgment.  
16 Generally, summary judgment must be granted when there is no genuine issue of material  
17 fact -- that is, if there is no real dispute about any fact that would affect the result of your  
18 case, the party who asked for summary judgment is entitled to judgment as a matter of law,  
19 which will end your case. When a party you are suing makes a motion for summary  
20 judgment that is properly supported by declarations (or other sworn testimony), you cannot  
21 simply rely on what your complaint says. Instead, you must set out specific facts in  
22 declarations, depositions, answers to interrogatories, or authenticated documents, as  
23 provided in Rule 56(e), that contradict the facts shown in the defendant's declarations and  
24 documents and show that there is a genuine issue of material fact for trial. If you do not  
25 submit your own evidence in opposition, summary judgment, if appropriate, may be  
26 entered against you. If summary judgment is granted [in favor of the defendants], your  
27 case will be dismissed and there will be no trial.

28 *Rand v. Rowland*, 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc).

Before filing his opposition, Plaintiff is advised to read the notice that will be provided to  
him by Defendant when the motion is filed, and Rule 56 of the Federal Rules of Civil Procedure  
and *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) (party opposing summary judgment must come  
forward with evidence showing triable issues of material fact on every essential element of his  
claim). Plaintiff is cautioned that because he bears the burden of proving his allegations in this  
case, he must be prepared to produce evidence in support of those allegations when he files his

1 opposition to Defendant's summary judgment motion. Such evidence may include sworn  
2 declarations from himself and other witnesses to the incident, and copies of documents  
3 authenticated by sworn declaration. Plaintiff will not be able to avoid summary judgment simply  
4 by repeating the allegations of his complaint.

5 The same evidentiary requirement applies if Defendant files a motion for summary  
6 judgment for failure to exhaust administrative remedies. To oppose this motion, Plaintiff must  
7 present any evidence he may have which tends to show that he did exhaust administrative  
8 remedies or was excused from doing so. Again, the evidence may be in the form of declarations,  
9 that is statements of fact from himself or other witnesses signed under penalty of perjury, copies of  
10 documents accompanied by a declaration showing where they came from and why they are  
11 authentic, or discovery documents such as answers to interrogatories or depositions. In  
12 considering a summary judgment motion for failure to exhaust administrative remedies, the Court  
13 can decide disputed issues of fact with regard to this portion of the case. *See generally Albino,*  
14 *747 F.3d at 1172-73; Stratton, 697 F.3d at 1008.*

15 c. Defendant shall file a reply brief no later than fourteen days after the date  
16 Plaintiff's opposition is filed.

17 d. The motion shall be deemed submitted as of the date the reply brief is due. No  
18 hearing will be held on the motion unless the Court so orders at a later date.

19 5. Discovery may be taken in this action in accordance with the Federal Rules of Civil  
20 Procedure. No further court order pursuant to Rule 30(a)(2) or Local Rule 16 is required before  
21 the parties may conduct discovery.

22 6. It is Plaintiff's responsibility to prosecute this case. He must keep the Court informed  
23 of any change of address and must comply with the Court's orders in a timely fashion. Failure to  
24 do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of  
25 Civil Procedure 41(b).

26 7. Extensions of time are not favored, though reasonable extensions will be granted. Any  
27 motion for an extension of time must be filed no later than three days prior to the deadline sought  
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to be extended.

IT IS SO ORDERED.

Dated: December 20, 2017



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KANDIS A. WESTMORE  
United States Magistrate Judge